

## FITZPATRICK, CELLA, HARPER &amp; SCINTO

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**TO:** Examiner F. Mathew  
U.S. Patent and Trademark Office

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**FROM:** Leonard P. Diana, Esq.

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**RE:** U.S. Patent Application No. 09/855,942  
Atty. Docket No. 02633.000001.

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**FAX NO.:** 703-872-9306

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**DATE:** October 27, 2004                   **NO. OF PAGES:**  
*(including cover page)*

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**TIME:**                                      **SENT BY:**

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**MESSAGE**

## Attachments:

Response and Request for New Office Action (three (3) pgs.), and attachment (one (1 pg.)

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02633.000001.

PATENT APPLICATION

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: ) Examiner: E. Mathew  
MICHAEL SACHS )  
Application No.: 09/855,942 ) Group Art Unit: 3764  
Filed: May 16, 2001 )  
For: MAXIMAL NASAL INTERNAL )  
SUPPORT SYSTEM : October 27, 2004

**Mail Stop Amendment**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RESPONSE AND REQUEST FOR NEW OFFICE ACTION

Sir:

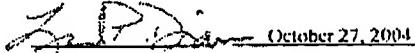
Applicant again thanks the Examiner and his supervisor for the courtesies extended Applicant's undersigned attorney in conducting a personal interview with him on July 22, 2004. The substance of that interview is summarized in the Second Preliminary Amendment, dated July 23, 2004, and filed in the U.S. Patent and trademark Office on that date by facsimile transmission and Certificate of Transmission (see attached copy of the Patent and Trademark Office's receipt of that transmission).

I hereby certify that this correspondence is being transmitted by facsimile to the U.S. Patent and Trademark Office at (703) 872-9306, on  
October 27, 2004.

(Date of Transmission)

Leonard P. Dienna (Reg. No. 29,296)

(Name of Attorney for Applicant)

 October 27, 2004

Signature

Date of Signature

A Second Information Disclosure Statement was also filed on July 23, 2004, by hand.

During the mentioned interview, the Examiner's supervisor advised Applicant's representative that Applicant's request in the Request for Continued Examination for a suspension, which had been requested for the purpose of scheduling and conducting a personal interview, was not correctly docketed by the Patent and Trademark Office staff, and that consequently, the Examiner had no choice but to issue an immediate Office Action. Nonetheless, it is noted that in light of the correctly-requested suspension, Applicant is entitled as of right to the entry of both the Second Preliminary Amendment and of the Second Information Disclosure Statement, since both were filed in the Patent and Trademark Office prior to the last day of the suspension, i.e., July 26, 2004.

Since for the mentioned reason the Examiner was constrained to issue an Action without waiting for the Second Preliminary Amendment and the Second Information Disclosure Statement to be processed by the Patent and Trademark Office clerical staff and forwarded to him, the Office Action dated July 26, 2004, necessarily did not take account of the changes made by the Second Preliminary Amendment, or acknowledge or make of record the information cited in the Second Information Disclosure Statement. While Applicant's attorney had understood that upon the mentioned papers being forwarded to the Examiner, a new Office Action would be issued, such new Action has not been received to date; accordingly, this Request is being submitted as a full response to the outstanding Action, and the vacation of that Office Action and issuance of a new Action is respectfully requested.

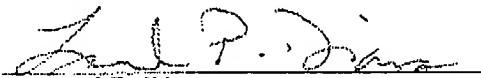
Should the Examiner upon consideration of the Second Preliminary Amendment and of the information cited in the Second Information Disclosure Statement, deem that any issues remain outstanding, he is respectfully requested to contact Applicant's undersigned attorney in an effort to resolve all such issues and to place the application fully in condition for allowance, as quickly as possible.

Any fee deemed due in connection with this paper should be charged, and any overpayment credited, to Deposit Account 06-1205.

Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

  
Leonard P. Diana  
Attorney for Applicant  
Registration No. 29,296

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<p style="margin: 0;">9/7/2004 14:02 FAX 1212 218 4591</p> <p style="margin: 0; text-align: center;">FITZPATRICK, H, V</p> <p style="margin: 0; text-align: center;"><b>FITZPATRICK, CELLA, HARPER &amp; SCINTO</b></p> <p style="margin: 0; text-align: center;">30 Rockefeller Plaza New York, NY 10162-3501 (212) 218-2100</p> <p style="margin: 0; text-align: center;">Facsimile: (212) 218-2200</p>	<p style="margin: 0; font-size: 1.5em; font-weight: bold;">RECEIVED</p> <p style="margin: 0; font-size: 1.2em; font-weight: bold;">JUL 23 2004</p> <p style="margin: 0; font-size: 1.2em; font-weight: bold;">FITZPATRICK, CELLA, HARPER &amp; SCINTO</p>
<p><b>FACSIMILE COVER SHEET</b></p> <hr/> <p><b>TO:</b> Examiner T. Mathews USPTO - TC/Air Unit 3764</p> <hr/> <p><b>FROM:</b> Leonard P. DiMauro (Reg. No. 29,396)</p> <hr/> <p><b>RE:</b> U.S. Patent Appln. No. 09/558,942 Attorney Docket #20035.000003</p> <hr/> <p><b>FAX NO.:</b> 703-872-9306</p> <hr/> <p><b>DATE:</b> July 23, 2004      <b>NO. OF PAGES:</b> 13 <small>(including cover page)</small></p> <hr/> <p><b>TIME:</b> _____      <b>SENT BY:</b> _____</p> <hr/> <p style="text-align: center;"><b>MESSAGE</b></p> <p style="text-align: center; font-size: small;">Please note that this document is being transmitted pursuant to the United States Patent and Trademark Office's "No. 955-872-0000" rule.</p> <p style="text-align: center; font-size: x-small;">July 23, 2004 Date of Transmission</p> <p style="text-align: center; font-size: x-small;">Leonard P. DiMauro (Reg. No. 29,396) Attorney of Record (by ANSWER)</p> <p style="text-align: center; font-size: x-small;">July 23, 2004 Date of Reception</p> <hr/> <p style="text-align: center;"><b>IF YOU DO NOT RECEIVE ALL THE PAGES PLEASE CALL 212-218-2100 AS SOON AS POSSIBLE.</b></p> <p><b>Note:</b> We are transmitting from a Canon Model FAX 1270 (compatible with any Group I, Group II or Group III machine).</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p style="margin: 0; font-size: x-small;">THIS FAX IS FOR OFFICIAL AND ACCOMPLISHING NO LEGAL AND ENFORCEABLE PURPOSES ONLY. USE OF THE INFORMATION CONTAINED ABOVE, INFORMATION THAT IS UNLICENSED OR OTHERWISE CONFIDENTIAL MAY BE VIOLATION OF TRADEMARK LAW OR OTHER INTELLECTUAL PROPERTY LAW. YOU ARE HEREBY ADVISED THAT ANY REPRODUCTION, REVIEW, USE, OR USE OF THIS MESSAGE, DOCUMENTS OR INFORMATION CONTAINED THEREIN IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE OR FACSIMILE AND MAIL THE ORIGINAL COPY AT THE ADDRESS PROVIDED. THANK YOU.</p> </div>	